

The ITFS/2.5 GHz Mobile Wireless Engineering & Development Alliance, Inc
P.O. Box 6060
Boulder, CO 80306

January 5,

2006

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Ex Parte Submission**

73, 74
Facilitate the
Broadband Access,
Services in the 2150-2162 and 2500
Bands

WT Docket No. 03-66. Amendment of Parts 1, 21,
and 101 of the Commission's Rules to
Provision of Fixed and Mobile
Educational and Other
- 2690 MHz

Dear Ms. Dortch:

Yesterday, John Primeau and I, directors of The ITFS/2.5 GHz Mobile Wireless Engineering & Development Alliance, Inc. ("IMWED") spoke today by telephone with John Giusti, legal advisor to Commissioner Copps, in connection with the above-listed proceeding.

We set forth the background of the Commission's regulation of the Educational Broadband Service (EBS), and its predecessor, the Instructional Television Fixed Service (ITFS), to promote education, as well as our view of the responsibilities of EBS licensees. We discussed the fact that the Commission has long regulated the length of EBS leases, and summarized the rationale the Commission has enunciated for doing so. We advocated that the Commission maintain a 15-year maximum lease term for EBS leases, and stated that automatic lease renewals or renewals at the lessee's option beyond 15 years are contrary to current Commission policy, as reiterated in the most recent Report and Order in the above-captioned proceeding.

We acknowledged that commercial interests have argued on reconsideration that the longstanding lease term limit has been eliminated by the application of the FCC's secondary market rules. We alluded to a variety of items in the record of the above-captioned proceeding, including a lease entered into between the Clarendon Foundation and Sprint Corporation that provides for minimal educational service and can be perpetual, if allowed by the FCC and

desired by Sprint. We criticized perpetual leases as analogous to reallocation of EBS spectrum to commercial use. We discussed the fact that under the secondary markets rules the FCC no longer requires the filing of EBS capacity leases, but rather relies on the information contained in transfer applications. We pointed out that recent *ex parte* filings by both commercial and EBS interests established what we had previously suspected: that parties have entered into numerous EBS leases in excess of 15 years. We also stated that EBS *de facto* transfer lease applications are often opaque with respect to the actual length of the subject lease. We argued that at least some parties had utilized secrecy to “hide the ball” from the Commission with respect to their leasing practices.

We advocated that the Commission require the public filing of unexpurgated copies of EBS leases as a means of ensuring that licensees adhere to FCC policies concerning EBS leasing. We stated that we are not requesting that FCC staff review such leases when they are filed.

We stated that we do not believe that a 15-year term limit is likely to cripple the leasing of EBS excess capacity, as argued recently by some parties. We stated that we have years of experience in leasing the capacity of the EBS systems we manage, understand the importance of lease revenue to support education, and want successful commercial business models for those who rent EBS capacity. We stated that there was ample demand for ITFS spectrum when the FCC-mandated lease term limit was 10 years, and later 15 years. We pointed out that the Commission allows lessees to obtain a right of first refusal as a provision within EBS leases, which means that under current policies the lessee can be assured of continued access to spectrum for 30 years. We said that while business models have changed, numerous very recent *ex parte* letters from EBS licensees indicate that commercial operators offered them 15-year lease terms, but that those licensees agreed to longer leases in order to obtain greater financial consideration. We stated that revenue maximization should not be the goal of EBS licensees if it is to the detriment of responsive educational service. We discussed our own experiences in excess capacity leasing, and means of furthering educational goals in a leasing context.

We stated that 15-year lease terms are pro-competitive, in that they mean that new entrants will be able to obtain a constant supply of spectrum due to expirations. We pointed to the dominant position of Sprint Nextel in the 2.5 GHz band---which perpetual leases could allow it to cement---and the fact that the Commission had deferred the consideration of lease term limits for Sprint Nextel to the above-captioned proceeding.

We stated that the bulk of the EBS community supports a term limit, including the National ITFS Association and the Catholic Television Network. We said that in our view the fact that EBS licensees have entered into longer leases does not mean that this practice is advantageous, or even preferred by the licensee, in light of the unequal power between a local licensee and a major corporation. We offered the opinion that commercial entities often contract with the most compliant EBS licensees first, and then put forward the resulting contracts as templates for later deals. We indicated that, historically, for-profit operators typically begin lease negotiations by proposing that they secure the maximum permitted capacity for commercial purposes under then-current FCC rules.

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, we are submitting this summary of the presentation by filing an electronic copy of this letter in the public record of the proceeding.

Respectfully submitted,

/s/ John B. Schwartz

John B. Schwartz
Director

cc John Giusti